Krishan Singh a/l Inder Singh v Muniandy a/l Manikkam & Anor

HIGH COURT (SHAH ALAM) — CIVIL SUIT NO MT6–24–186 OF 2006
NOR BEE JC
22 OCTOBER 2009

Contract — Undue influence — Agreement for sale and purchase of land — Fraud — Whether plea of non est factum available to defendants who claimed that agreement signed without them knowing essential nature of contract — Whether defendants fraudulently induced by plaintiff and his solicitors to sign sale and purchase agreement

The defendants, the registered owners of a piece of land in Mukim Klang with a house erected thereon ('the land'), wanted to sell their land. The land was charged to the Standard Chartered Bank and the sum of RM10,065.50 was due and owing to the bank as at 1 July 2005. The defendants were then introduced to the plaintiff buyer by one Anthony Samy ('the broker'). The plaintiff entered into a sale and purchase agreement ('the SPA') to purchase the land from the defendants at a purchase price of RM72,000. The plaintiff appointed the law firm operated by his son ('the plaintiff's solicitors') to attend to the sale and purchase transaction, and the defendants also appointed the same law firm to act for them to discharge the charge on the land. Thereafter the plaintiff's solicitors drew up the SPA which was executed by the plaintiff and the defendants on 23 June 2005. Although the defendants as vendors were unrepresented by any solicitors at the time when the SPA was signed, the broker made a statutory declaration that he had explained the contents of the SPA to both the defendants and that they had thoroughly understood the same before signing it. The broker also declared that he witnessed the plaintiff paying the defendants RM61,934.50 in cash and RM10,065.50 for the redemption of the charge by way of a cheque. The first defendant then personally delivered the cheque to the bank and the plaintiff's account was duly debited for the said amount. It was agreed by the parties that when the defendants obtained the original copy of the title deed in respect of the land it would be deposited with the plaintiff's solicitors for the purpose of executing the transfer. However, upon collecting the original title deed from the bank the defendants refused to hand it over to the plaintiff's solicitors. The plaintiff then filed the present originating summons application against the defendants for specific performance. In their defence the defendants claimed that the plaintiff and his solicitors had defrauded

them and exercised undue influence to induce them into signing the SPA. They submitted that they had been misled into signing the SPA which they had mistaken for a document for the discharge of the charge. They also denied ever receiving the cash amount of RM61,934.50 and averred that the plaintiff showed no proof of such payment. As for the cheque for RM10,065.50 issued by the plaintiff the defendants alleged that it was actually issued in exchange for money which they had paid to the plaintiff's solicitors. The defendants further refuted the broker's statutory declaration as untrue and alleged that they had engaged the broker to assist them in getting the discharge of the charge on their land and nothing more. The defendants also made a police report claiming wrongdoings by the plaintiff's solicitors. The two main issues in this action were whether the defendants could avail themselves of the defence of non est factum to disown the SPA and whether the defendants were fraudulently induced by the plaintiff and his solicitors to sign the SPA.

Held, granting order in terms with costs:

(1) Applying the principle of law to the present case, the doctrine of non est factum was not available to the defendants. The defendants never denied that the initials appearing on p 8 of the SPA and the signature on the last page of the SPA were theirs and it was therefore highly inconceivable that they had no knowledge of the contents of the SPA. Further the broker's statutory declaration, which clearly explained the situation as it stood between the parties must be construed adversely against the defendants. Although the defendants challenged the statutory declaration they did not produce any evidence to show why the statutory declaration must be rejected or its contents disbelieved. The defendants neither lodged any police report to allege that the broker had made a false declaration which is a criminal offence nor showed independent evidence that the broker had conspired or colluded with the plaintiff or his solicitors to defraud them (see paras 5–6).

(2) The defendants did not set out in detail the particulars of fraud alleged to have been committed by the plaintiff and his solicitors other than the two facts that they had failed to explain the true contents of the documents and had deceived them into believing that they were signing the discharge documents. Although the plaintiff might not have insisted on them appointing their own solicitors the defendants had the assistance of their broker. In addition the police report used by the defendants to corroborate their allegations of fraud was most likely an apparent afterthought as it was lodged three years after the originating summons was served on them. As such, there was no evidence shown

by the defendants that the plaintiff and his solicitors had exercised undue influence over them or taken unfair advantage of them (see paras 8–9, 11).

(3) If the cheque for RM10,065.50 was actually issued in exchange for money which the defendants had paid to the plaintiff's solicitors then the cheques could not possibly be the plaintiff's cheques but that of the plaintiff's solicitors. The defendants were also unable to explain where the amount of RM10,065.50 allegedly paid to the plaintiff's solicitors came from. This further strengthened the plaintiff's contention that the money was his (see para 10).

(4) On the facts of the present case there was no improper or unethical conduct on the part of the plaintiff's solicitors that gave rise to any conflict of interest which gravely prejudiced or affected the defendants' interest (see para 11).

[Bahasa Malaysia summary

Defendan-defendan, pemilik berdaftar sebidang tanah di Mukim Klang dengan sebuah rumah didirikan di atasnya ('tanah'), hendak menjual tanah mereka. Tanah tersebut dicagarkan kepada Bank Standard Chartered dan jumlah RM10,065.50 kena dibayar dan terhutang kepada bank pada 1 Julai 2005. Defendan-defendan kemudiannya diperkenalkan kepada pembeli plaintif oleh Anthony Samy ('broker'). Plaintif menandatangani perjanjian jual beli ('PJB') untuk membeli tanah daripada defendan-defendan pada harga belian RM72,000. Plaintif melantik firma guaman yang diuruskan oleh anaknya ('peguam cara plaintif') untuk menguruskan transaksi jual beli tersebut, dan defendan-defendan juga melantik firma guaman yang sama untuk bertindak bagi pihak mereka untuk melepaskan gadaian ke atas tanah tersebut. Kemudiannya peguam cara mendraf PJB yang disempurnakan oleh plaintif dan defendan-defendan pada 23 Jun 2005. Walaupun defendan-defendan sebagai penjual tidak diwakili oleh mana-mana peguam cara semasa PJB ditandatangani, broker tersebut membuat deklarasi statutori bahawa dia telah menjelaskan isi kandungan PJB kepada kedua-dua defendan dan bahawa mereka faham sepenuhnya PJB sebelum menandatanganinya. Broker juga membuat deklarasi bahawa dia menyaksikan plaintif membayar RM61,934.50 secara tunai kepada defendan dan RM10,065.50 untuk menebus gadaian melalui cek. Kemudiannya, defendan pertama sendiri yang memberikan cek kepada bank dan akaun plaintif didebitkan untuk jumlah tersebut. Pihak-pihak bersetuju bahawa apabila defendan-defendan memperoleh surat ikatan hak milik asal tanah tersebut, maka ia akan didepositkan kepada peguam cara plaintif bagi tujuan menyempurnakan pindah milik. Walau bagaimanapun, selepas mengambil surat ikatan hak milik daripada bank, defendan-defendan enggan memberikannya kepada

peguam cara plaintif. Plaintif kemudiannya memfailkan permohonan saman pemula ini terhadap defendan-defendan untuk pelaksanaan spesifik. Dalam pembelaan mereka, defendan-defendan mendakwa bahawa plaintif dan peguam caranya telah menipu mereka dan menggunakan pengaruh tak wajar untuk mempengaruhi mereka menandatangani PJB tersebut. Mereka menghujah bahawa mereka telah diperdaya untuk menandatangani PJB tersebut yang disangkakan merupakan dokumen untuk melepaskan gadaian. Mereka juga menafikan menerima RM61,934.50 dan menegaskan bahawa plaintif tidak menunjukkan bukti pembayaran tersebut. Defendan menghujah bahawa cek untuk RM10,065.50 yang dikeluarkan oleh plaintif sebenarnya bagi menggantikan wang yang dibayar oleh mereka kepada peguam cara plaintif. Selanjutnya, defendan-defendan menyangkal deklarasi statutori broker sebagai tidak benar dan mendakwa bahawa mereka melantik broker untuk membantu mereka melepaskan gadaian di atas tanah mereka sahaja dan tidak lebih daripada itu. Defendan-defendan juga membuat laporan polis mendakwa kesalahan-kesalahan peguam cara plaintif. Dua isu utama dalam tindakan ini ialah sama ada defendan-defendan boleh menggunakan pembelaan non est factum untuk tidak memperakui PJB tersebut dan sama ada defendan-defendan secara fraud dipengaruhi oleh plaintif dan peguam caranya untuk menandatangani PJB.

Diputuskan, membenarkan perintah seperti dipohon dengan kos:

(1) Dengan menggunakan prinsip undang-undang kepada kes ini, doktrin non est factum tidak boleh digunakan oleh defendan-defendan. Defendan-defendan tidak pernah menafikan bahawa parap-parap yang ada pada ms 8 PJB dan tandatangan pada muka surat terakhir PJB adalah kepunyaan mereka dan oleh itu adalah tidak dapat diterima bahawa mereka tidak mempunyai pengetahuan mengenai isi kandungan PJB. Selanjutnya deklarasi statutori, yang jelas menerangkan keadaan di antara pihak-pihak ditafsirkan menentang defendan-defendan. Walaupun defendan-defendan mencabar deklarasi statutori, mereka tidak mengemukakan apa-apa keterangan untuk menunjukkan kenapa deklarasi statutori tersebut perlu ditolak atau isi kandungannya tidak dapat dipercayai. Defendan-defendan tidak membuat laporan polis untuk mendakwa bahawa broker tersebut telah membuat deklarasi statutori palsu yang merupakan kesalahan jenayah atau menunjukkan keterangan yang boleh dipercayai bahawa broker tersebut telah membuat konspirasi atau berpakat dengan plaintif atau peguam caranya untuk menipu mereka (lihat perenggan 5–6).

(2) Defendan-defendan tidak menyatakan secara terperinci mengenai fraud yang didakwa dilakukan oleh plaintif dan peguam caranya melainkan dua fakta bahawa mereka gagal menjelaskan isi kandungan sebenar

dokumen-dokumen dan menipu mereka untuk membuatkan mereka percaya bahawa mereka menandatangani dokumen-dokumen melepaskan gadaian. Walaupun plaintif mungkin tidak mendesak mereka melantik peguam cara mereka sendiri, defendan-defendan mendapat bantuan broker mereka. Sebagai tambahan, laporan polis yang digunakan oleh defendan-defendan untuk menyokong dakwaan fraud mereka merupakan fikiran kemudian memandangkan ia dilaporkan tiga tahun selepas saman pemula diserahkan kepada mereka. Oleh itu, tiada keterangan yang ditunjukkan oleh defendan-defendan bahawa plaintif dan peguam caranya telah menggunakan pengaruh tak wajar terhadap mereka atau mengambil faedah tak saksama terhadap mereka (lihat perenggan 8–9, 11).

(3) Sekiranya cek untuk RM10,065.50 dikeluarkan bagi menggantikan wang yang dibayar oleh defendan-defendan maka cek tersebut bukanlah cek plaintif tetapi kepunyaan peguam cara plaintif. Defendan-defendan juga tidak dapat menjelaskan dari mana datangnya jumlah RM10,065.50 yang dikatakan dibayar kepada peguam cara plaintif. Ini selanjutnya mengukuhkan hujahan plaintif bahawa wang itu kepunyaannya (lihat perenggan 10).

(4) Berdasarkan fakta kes ini tidak terdapat tindakan tak wajar atau tidak beretika bagi pihak peguam cara plaintif yang menimbulkan apa-apa konflik kepentingan yang memprejudis atau menjejaskan kepentingan defendan-defendan (lihat perenggan 11).]

Notes

For cases on agreement for sale and purchase of land, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 5460–5461.

Cases referred to

Ang Hiok Seng @ Ang Yeok Seng v Yim Yut Kiu (personal representative of the estate of Chan Weng Sun, deceased) [1997] 2 MLJ 45, FC (refd)

Datuk Jagindar Singh & Ors v Tara Rajaratnam [1983] 2 MLJ 196, FC (refd)

Nallammal & Anor v Karuppanan & Anor [1993] 3 MLJ 476, HC (refd)

PJTV Denson (M) Sdn Bhd & Ors v Roxy (Malaysia) Sdn Bhd [1980] 2 MLJ 136, FC (folld)

Ong Ban Chai & Ors v Seah Siang Mong [1998] 3 MLJ 346, CA (distd)

Wong Hon Leong David v Noorazman bin Adnan [1995] 3 MLJ 283; [1995] 4 CLJ 155; [1996] 1 AMR 7, CA (refd)

Legislation referred to

Penal Code

Statutory Declarations Act 1960 s 3

Ranjit Singh a/l Krishan Singh (K Ranjit Singh & Partners) for the plaintiff. Kam bt Sani (Pathma Nalli & Partners) for the defendants.

Nor Bee JC:

THE PLAINTIFF'S CASE

[1] The defendants are the registered owner of a piece of land known as HS(D) 22636, PT No 22874, Mukim Klang, Daerah Klang, Negeri Selangor Darul Ehsan with a house erected thereon ('the said land'). The said land was charged to Standard Chartered Bank Malaysia ('the bank') and a sum of RM10,065.50 was due to the bank as at 1 July 2005. One Anthony Samy a/l Soosay ('Anthony') introduced the plaintiff to the defendants who had wanted to sell the said land. The plaintiff appointed Messrs K Ranjit Singh & Partners ('the legal firm') as his solicitors to attend to the sale and purchase transaction. Mr K Ranjit Singh ('Ranjit Singh') from the legal firm is the plaintiff's son. The defendants also appointed the legal firm on 14 June 2005 to act for them to discharge the charge of the said land and the legal firm sent a letter dated 22 June 2005 to the bank for that purpose. The plaintiff's cheque dated 20 June 2005 for the redemption sum of RM10,065.50 was however rejected by the bank. A sale and purchase agreement was subsequently drawn up by the legal firm and executed by the plaintiff and the defendants on 23 June 2005 ('the said agreement'). The purchase price was RM72,000. The amendment to cl 4 of the said agreement indicates that the vendors were unrepresented by any solicitors when the document was signed. Anthony made a statutory declaration that he had explained the contents of the said agreement to both the defendants and they thoroughly understood them before signing the document. He also declared that he witnessed the plaintiff paying the defendants cash payment of RM61,934.50 and RM10,065.50 in cheque for the redemption of the charge. Subsequent to that, the legal firm wrote a covering letter to the bank dated 6 July 2005 to redeem the said land and again enclosed with it the appointment letter by the defendants dated 14 June 2005 and the plaintiff's cheque of RM10,065.50 dated 6 July 2005. The plaintiff's account was debited for the said amount on 8 July 2005. The cheque was delivered personally by the first defendant to the bank on the understanding that upon collection of the original copy of the title deed, it would be deposited with the plaintiff's solicitors for purposes of executing a transfer. The defendants collected the title deed but refused to hand it over. This originating summons was filed to order the defendants to do the same.

THE DEFENDANTS' CASE

[2] The defendants claimed that the plaintiff and his solicitors had defrauded them and exercised undue influence to induce them into signing the said agreement. They thought they were signing documents for the

A discharge of the charge and not a sale and purchase transaction of their own land. They denied ever receiving the cash amount and averred that the plaintiff showed no proof of such payment. As to the cheque, the first defendant alleged that it was actually issued in exchange for his own money which was paid in cash to the plaintiff's solicitors. On Anthony, the B defendants refuted his statutory declaration, saying all were untrue. Anthony Samy was a broker they had engaged who had introduced Ranjit Singh to them to assist in getting the discharge of the charge on their property and nothing more. The defendants showed proof of payment to Anthony but the latter denied receiving any money from them in his police report.

C

ISSUES

[3] In essence, there are two main issues of law posed in this case. Firstly, whether the plea of non est factum is available to the defendants who claims D that the said agreement was signed without them knowing the essential nature of the contract and were mistaken as to its content. Secondly, whether they were fraudulently induced by the plaintiff and his solicitors to sign the said agreement.

E THE LAW AND FINDINGS

[4] The development of the common law doctrine of non est factum and the principles to apply was described by Lim Beng Choon J (as he then was) F in *Nallammal & Anor v Karuppanan & Anor* [1993] 3 MLJ 476 at pp 484 and 485:

> The plea of non est factum was formerly held by the English judges to be available only if the mistake was as to the very nature of the transaction — if a party had been misled into executing a deed or signing a document essentially different from G that which he intended to execute or sign, he could successfully plead non est factum in an action against him — see *Foster v Mackinnon* at p 711. The law on this subject was completely reviewed and restated by the House of Lords in *Saunders v Anglia Building Society*, where it was held that in exceptional cases, the plea was available so long as the person signing the document had made a H fundamental mistake as to the character or effect of the document. Their Lordships appear to have directed their minds on the disparity between the effect of the document actually signed and the document as it was believed to be. It was also held that the disparity must be 'radical', 'essential', 'fundamental', or 'very substantial'.

I

[5] Applying this principle of law to the present case, it is clear from the affidavit evidence that the doctrine is not available to the defendants. It is highly inconceivable that they had no knowledge of the contents of the said agreement as they never denied that the initials appearing at eight pages of the

said agreement and the signatures on the last page, were theirs. The most telling evidence is Anthony's statutory declaration which describes the transaction that had taken place between the plaintiff and the defendants pertaining to the signing of the said agreement and the payment of the consideration sum. For better understanding, I reproduce below the contents of the statutory declaration:

STATUTORY DECLARATION

I, ANTHONY SAMY A/L SOOSAY (NRIC NO:580606-10-5557) a Malaysian Citizen of full age and having an address of residence at No. 78, Jalan Pasi, Off Jalan Batu Tiga Road, 41300 Klang, Selangor Darul Ehsan do solely affirm and declare as follows:-

1. I did introduce one Muniandy s/o Manikkan (Nric No.531226-10-5271) and Ramaye d/o Ponniah (Nric No.630610-10-7494) the registered knows of property held under H.S (D):22636, PT No:22874, in the Mukim Of Klang, Daerah Klang, Selangor Darul Ehsan with a postal address No: 29, Jalan Dato Abdul Hamid 8, Taman Sentosa, 41200 Klang, Selangor Darul Ehsan to one Krishan Singh a/l Inder Singh (Nric No:320108-71-5191) for the purpose of the registered owners wanting to sell the above property to the buyer Mr Krishan Singh.
2. The Registered Owners and the said Mr Krishnan Singh did on the 23 day of June 2005 enter into a Sale and Purchase Agreement, the purchase price being agreed upon as RM72,000.00 only.
3. *Before the said sale and purchase agreement was signed I personally explained to the registered owners the contains of the said agreement which they thoroughly understood.*
4. *Only upon confirming the contains is fully understood they signed the said Agreement.*
5. *The buyer Krishnan Singh in front of me paid the registered owners the full purchase price in cash which was received by them, less the sum of RM10,065.50 for the redemption amount owing by the registered owners to Standard Chartered Bank Malaysia Berhad, which I personally saw Krishan Singh issuing a cheque for the said sum.*

And I make this solemn declaration believing the same to be true and by virtue of the provisions of the Statutory Declaration Act 1960.

Affirmed by the said Anthony Samy A/L)

Soosay (NRIC NO:580606-10-5557)) SIGD

SIGD

Pesuruhjaya Sumpah.

(Emphasis added.)

[6] The defendants challenged the statutory declaration but only by making bare and unsubstantiated allegations. The defendants did not produce any evidence to show why the statutory declaration must be rejected or its contents to be disbelieved. Neither was any police report lodged to allege that Anthony had made false declaration which is a criminal offence punishable under the Penal Code (s 3 of the Statutory Declarations Act 1960) in the like manner a police report was lodged by them claiming wrongdoings against Ranjit Singh. There was no independent evidence adduced to show that Anthony had conspired or colluded with the plaintiff and Ranjit Singh to defraud them in any manner whatsoever or for whatever purpose. Under such circumstances, it is inevitable that I must construe Anthony's statutory declaration adversely against the defendants and state my stand that the statutory declaration render firm support to the plaintiff's contention that the defendants thoroughly understood the contents of the document they were signing and the legal effect created by the said document. The defendants therefore cannot avail themselves the defence of non est factum to disown the said agreement.

[7] I now proceed to consider the second issue. What amounts to fraud was defined by Raja Azlan Shah CJ (Malaya) (as HRH then was) in *PJTV Denson (M) Sdn Bhd & Ors v Roxy (Malaysia) Sdn Bhd* [1980] 2 MLJ 136 at p 138, as follows:

> Whether fraud exists is a question of fact, to be decided upon the circumstances of each particular case. Decided cases are only illustrative of fraud. Fraud must mean 'actual fraud, ie dishonesty of some sort' for which the registered proprietor is a party or privy. 'Fraud is the same in all courts, but such expressions as 'constructive fraud' are … inaccurate;' but 'fraud' … implies a willful act, on the part of one, whereby another is sought to be deprived, by unjustifiable means, of what he is entitled (per Romilly MR in *Green v Nixon* (1857) 23 Beav 530; 53 ER 208). Thus in *Waimiha Sawmilling Co Ltd v Waione Timber Co Ltd* [1926] AC 101 it was said that 'if the designed objected of a transfer to be cheat a man of a known existing right, that is fraudulent ...'

[8] Applying this definition to the present case, from the facts of this case and in the light of Anthony's statutory declaration and having analysed the affidavits and written submissions by the learned solicitors from both sides, I have no hesitation to hold that the plaintiff and Ranjit Singh had not defrauded the defendants. The defendants did not set out in detail particulars of fraud said to have been committed by the plaintiff and Ranjit Singh other than the two had failed to explain the true contents of the documents and had deceived them into believing that they were signing discharge documents. The case of *Ong Ban Chai & Ors v Seah Siang Mong* [1998] 3

MLJ 346 was cited to me by the learned solicitors for the defendants to show that even though the terms of the agreement had been explained to the defendants before they signed it, the Court of Appeal case is the authority for saying that as the defendants had no independent solicitors to advise and act for them in the transaction, the plaintiff should have advised them and insisted that they be represented by their own solicitors so that any fraudulent act or improper conduct could be avoided in the best interest of both parties. I am guided by the decision in that case and also the Federal Court decision in *Datuk Jagindar Singh & Ors v Tara Rajaratnam* [1983] 2 MLJ 196. *Ong Ban Chai* must however be distinguished factually from the present case which is just a simple case of sale and purchase transaction with the defendants making attempts to disown the said agreement by alleging fraud, primarily due to the involvement of Ranjit Singh. Admittedly the plaintiff might not have insisted on them appointing their own solicitors but the defendants had the assistance of Anthony whom they acknowledged was known to them. As I had mentioned earlier, they never at any time claimed that Anthony had misled them into signing or colluded or conspired with the plaintiff or Ranjit Singh to defraud them.

[9] The police report that was used by the defendants to corroborate their allegations of fraud and claiming wrongdoings by Ranjit Singh is an apparent afterthought. It was lodged on 26 March 2008, about two weeks after the defendants engaged the services of their solicitors on 10 March 2008 and almost three years after the originating summons was served on them. If it is true that the plaintiff and Ranjit Singh had defrauded them, why do they have to wait for three years to do so? After they had received the letter dated 24 August 2005 from the plaintiff's solicitors demanding the deposit of the original title deed, they should have done what was expected of them to do at the earliest possible opportunity to demonstrate their prompt and vigorous denials by lodging a police report or taking any other course of action or measure (the case of *Wong Hon Leong David v Noorazman bin Adnan* [1995] 3 MLJ 283; [1995] 4 CLJ 155; [1996] 1 AMR 7). Natural probabilities of human conduct and instinct to protect one's entitlement against any transgressor would strictly demand that. However, taking into consideration they were illiterate, it would be reasonable for me not to expect an almost prompt response from them to timeously lodge a police report or to resort to taking any action or measure in order to safeguard them interests. However, if a police report was not lodged or any other action or measure not taken even after the defendants would have full knowledge of the originating summons against them as the case was mentioned before the learned judge on four occasions namely, 10 July 2006, 4 December 2006 and 6 August 2007 and on 14 March 2008 when their solicitors made their first appearance, then whatever report or otherwise that emerged thereafter cannot be anything but an afterthought.

[10] An added reason for arriving at my finding that the plaintiff could not be faulted for allegedly defrauding the defendants is on the issuance of the cheques. The first and second cheques could not have been in exchange for the money the defendants had given to Ranjit Singh. If the purported money was given to the solicitors then the cheques could not have possibly be the plaintiff's cheques but that of the solicitor's. It was the plaintiff's account that was debited for that amount of RM10,065.50 and not the solicitor's client accounts. The first defendant's statement of account showing withdrawals made in order to pay Anthony does not bear any significance or relevance to this case but reference is made nevertheless to show that it does not stand to reason that on one hand the defendants chose to reveal the source of money to pay Anthony but on the other, not revealing where the amount of RM10,065.50 allegedly paid to Ranjit Singh came from. The first defendant's statement of account did not show that he had that sufficient fund he claimed to have paid Ranjit Singh since February 2005. The defendants could have derived the money from elsewhere but by choosing not to disclose the source, it is only manifestly obvious that the disclosure would not be favourable to them and instead, has the propensity of further strengthening the plaintiff's contention that the money was his.

[11] When viewed together, there is no shred of evidence shown by the defendants that the plaintiff and Ranjit Singh had exercised undue influence over or taken unfair advantage of them in any manner. Anthony's statutory declaration shows that no instances of fraud have occurred in the sale and purchase transaction despite there being established the solicitor-client relationship between the plaintiff and Ranjit Singh and the defendants. The existence of fraud has to be decided according to its particular facts. On the facts of the present case, I am unable to find any improper or unethical conduct on the part of Ranjit Singh that gives rise to any conflict of interest which gravely prejudices or affects the defendants' interest. On the contrary, affidavit evidence suggests that he was merely carrying out his role as a solicitor for the plaintiff, and the defendants in respect of the charge. If Ranjit Singh is guilty of fraud or unethical behaviour, the defendants could lay a complaint over his professional misconduct with the Disciplinary Board for advocates and solicitors of the Malaysian Bar. That so far has not been resorted to, presumably because their allegations of fraud are wanting of proof in this respect.

[12] Going by the definition of fraud in *PJTV Denson (M) Sdn Bhd & Ors*, I am of the view that the defendants had failed on both issues on civil burden (see *Ang Hiok Seng @ Ang Yeok Seng v Yim Yut Kiu (personal representative of the estate of Chan Weng Sun, deceased)* [1997] 2 MLJ 45) and I accordingly make an order in term of the plaintiff's application for specific performance against the defendants to deposit the original title deed of the said land with

Messrs K Ranjit Singh & Partners for purposes of executing the transfer into the plaintiff's name and costs as prayed for in paras (a) and (c).

Order in terms granted with costs.

Reported by Kohila Nesan